***THE HONOURABLE DR JUSTICE G.YETHIRAJULU**

+WRIT PETITION NO. 13981 OF 2004

%Dated 28-10-2004

Ananthapur Municipality, Ananthapur,

rep., by its Commissioner, P. Dhanunjaya.

..... PETITIONER

AND

$ 1 S. Khasim Peeran, S/o S. Budan Sab,
r/o D.No. 7/249, Rahamath Nagar, Near Govt. ITI, Ananthapur.
2 State of A.P. rep. by its Secretary,
Municipal Administration,Secretariat, Hyderabad, A.P.
3 Commissioner & Director, Municipal Administration,
MCH Complex, Hyderabad, A.P.
4 The Industrial Tribunal - Labour Court, Ananthapur, A.P.
(R2 & 3 not necessary parties).

....Respondents

! COUNSEL FOR THE PETITIONER: Mr. K.M.MAHENDER REDDY.

COUNSEL FOR THE RESPONDENT NO.1: Mr. P.RAGHAVENDER REDDY

^ COUNSEL FOR THE RESPONDENTS NO.4 : GP FOR LABOUR

< Gist:

> Head Note:

? Cases referred:

1. 1995(2) ALT 320

2. (2001) 10 S.C.C.611

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 13981 of 2004

Between:

Ananthapur Municipality, Ananthapur,

rep. by its Commissioner, P. Dhanunjaya.

..... PETITIONER

AND

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r/o D.No. 7/249, Rahamath Nagar, Near Govt. ITI, Ananthapur.
2 State of A.P. rep. by its Secretary,
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MCH Complex, Hyderabad, A.P.
4 The Industrial Tribunal - Labour Court, Ananthapur, A.P.
(R2 & 3 not necessary parties).

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ of mandamus or certiorari or any other writ, order or direction by declaring the action of the 4th respondent in passing award in I.D.No. 153/2002 dt. 16-2-2004 published by a notification G.O.Rt.No. 654 dt.
22-4-2004 as illegal, arbitrary, unjust, unreasonable without jurisdiction, opposed to public policy, violative of principles of natural justice and also violative of fundamental rights guaranteed under Article 14, 21 of Constitution of India and set aside the same.

Counsel for the Petitioner: Mr. K.M.MAHENDER REDDY

Counsel for the Respondent NO.1 Mr. P.RAGHAVENDER REDDY

Counsel for the Respondent No.4 : GP FOR LABOUR

(Respondents 2 and 3 are not necessary as per CT)

The Court at the admission stage made the following ORDER:

The petitioner-Municipality of Ananthapur approached this Court seeking to declare that the award of the 4th respondent dated 16-2-2004 passed in I.D.No.153 of 2002 as illegal, arbitrary, unreasonable and without jurisdiction.

The 1st respondent was appointed as a turn-cock(Last grade) on 12-2-1963 and he was promoted as a Water works Pipeline Fitter through the proceedings dated 5-5-1966. The petitioner contends that the 1st respondent is in a supervisory cadre, supervising the work of the turn-cocks, therefore he will not come within the definition of workman and he is not entitled to continue till he completes the age of 60 years. When the petitioner issued an order dated 25-3-2002 directing the 1st respondent to retire at the age of 58 years, he approached the 4th respondent-Industrial Tribunal claiming that he comes within the definition of “workman” and as the petitioner-Municipality was declared as “an industry” he is entitled to continue till he completes 60 years which shall be treated as his age of superannuation. The Industrial Tribunal through its award dated

16-2-2004 held that the 1st respondent is a workman and accordingly, set aside the order of the petitioner dated 25-3-2002 by directing the petitioner to continue the 1st respondent in service till he completes 60 years by 31-5-2004. The petitioner being aggrieved by the order of the 4th respondent-Tribunal approached this Court through the present Writ Petition.

The learned counsel for the petitioner submitted that as the 1st respondent worked in the Supervisory cadre, he comes within the purview of the ministerial staff, therefore, he cannot be treated either as a workman or as a last grade employee. Hence, he is liable to be retired on completion of the age of 58 years.

The learned counsel for the petitioner represented that under Section 3 of the A.P. Public Employment (Regulation of Age of Superannuation) Act, 1984, (for short 'the Act') the 1st respondent in supervisory cadre also, he comes within the definition of a workman and he is entitled to continue in service till he completes the age of 60 years.

Sub-section 3 of Section 3 of the Act reads as follows:

> "Every workman whether in superior or last grade service, or in any service notified as inferior shall ordinarily be retained in service upto the age of sixty years":
>
> Provided that any workman may be required to retire at any time after attaining the age of fifty-five years after being given one month's notice or one month's pay in lieu thereof, on the ground of impaired health or of being negligent or inefficient in the discharge of duties;
>
> Provided further that a workman may also retire at anytime after attaining the age of fifty-five years, by giving one month's notice in writing.
>
> Explanation I :- In this section, the word "workman" means a highly skilled, or semi-skilled or unskilled artisan in industrial and work charged establishment of Government.
>
> Explanation II :- For the removal of doubts, it is hereby declared that-----
>
> (a) a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of (fifty-eight) or sixty years, as the case may be;
>
> (b) a Government employee who attained the age of superannuation but who was allowed to continue to hold the post beyond that date by virtue of a stay order of a Court, shall be deemed to have ceased to hold the post and relieved of his charge from the date of the judgment dismissing his petition,

> irrespective of whether the charge of the post was handed over or not as prescribed in any rule or order of the Government for the time being in force.

The learned counsel for the 1st respondent in support of his contention relied on a judgment of a single Bench of this Court in **RAJENDRANAGAR MUNICIPALITY, REP. BY ITS COMMISSIONER v. B.V.PERRAJU AND OTHERS, WORKMEN OF RAJENDRANAGAR MUNICIPALITY AND ANOTHER**, wherein this Court held that the municipality is "an industry" and the persons working as fitters, operators, electricians and watchmen entrusted with the work of water supply and machinery are "workmen".

Section 3 (3) of the Act makes it clear that the workers of the supervisory cadre also are entitled to continue in service till they complete 60 years of age. The decision of this Court referred above made the position further clear that the fitter of a municipality is also a "workman". Since the 1st respondent was working as a fitter by the date of the notice dated 25-3-2002, he is entitled to take the aid of the above decision in support of his contention. The Industrial Tribunal after examining the legal position held that the 1st respondent is a workman and he is entitled to continue in service till he completes the age of 60 years.

The learned counsel for the petitioner relied on a judgment of the Supreme Court in **BIRLA CORPORATION LTD., v. RAJESHWAR MAHATO AND OTHERS** to impress upon this Court that an employee who is at the managerial or administrative cadre do not come within the purview of the definition of "workman". The principle laid down by the Supreme Court in the above decision that an employee working in the managerial or administrative cadre is not a workman is not in dispute, but since the work entrusted to the 1st respondent to supervise the work of the turn-cocks cannot be treated as an administrative or managerial work. The decision cited by the learned counsel for the petitioner is not applicable to the facts of this case.

In the light of the observations made by me in the foregoing discussion, I have no hesitation to hold that the 1st respondent comes within the definition of a "workman". Therefore, I do not find any grounds to interfere with the order of the 4th respondent dated 16-2-2004.

In the result, the Writ Petition is dismissed.

(Dr. G.YETHIRAJULU,J)

28th October, 2004.

Note:

Furnish C.C. within one week

B/o

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L.R. copy to be marked.

ONE FAIR COPY TO THE HONOURABLE DR.JUSTICE G.YETHIRAJULU

(FOR HIS LORDSHIPS KIND PERUSAL)

To

1. The Secretary,

Municipal Administration, The State of Andhra Pradesh,

Secretariat,

Hyderabad, A.P.

2 The Commissioner & Director, Municipal Administration,

MCH Complex, Hyderabad, A.P.

3 The Industrial Tribunal - Labour Court,

Ananthapur, A.P.

4 8 L.R.Copies.

5 The Under Secretary, Union of India, Ministry of Law,

Justice and Company Affairs, New Delhi.

6 The Secretary, AP Advocates Association Library,

High Court Buildings, Hyderabad.

7 Two CCs to the GP for Labour, High Court of A.P.,

Hyderabad (O.U.T.)

8 Two CD Copies.